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October 9, 2023

Via ECF

The Honorable Martin Glenn
Chief United States Bankruptcy Judge
United States Bankruptcy Court
Southern District of New York
Alexander Hamilton U.S. Custom House
One Bowling Green, Courtroom 523
New York, NY 10004-1408

Re: *In re Celsius Network LLC*, No. 22-10964 (MG) – Request For
Clarifications, Additions, and Modifications to Confirmation Hearing
Procedures

Dear Chief Judge Glenn:

Pursuant to paragraph 7 of the *Order Establishing Case Management Procedures for the Confirmation Hearing*, Dkt. No. 3478, the Debtors write to request certain modifications to the case management procedures that will govern the evidentiary presentation for the opposition phase of the confirmation. To provide for a streamlined and organized presentation, the Debtors propose the following:

Extension of Deposition Period for Declarants in Opposition to Confirmation. The initial discovery schedule for confirmation-related discovery set the deadline for completion of fact depositions on September 20, 2023. *See Notice of Discovery Schedule for Confirmation Hearing*, Dkt. No. 3356, at 2. This deadline was agreed to over three weeks before the confirmation hearing was bifurcated into “supporting” and “opposing” evidentiary presentations with respect to confirmation, Dkt. No. 3478. No party sought depositions. Instead of serving wide ranging notices to all creditors who have expressed concerns about various aspects of the plan throughout these cases, the Debtors opted to wait until they could review any expert reports served, plan objections and observe the questioning of witnesses in support of confirmation to determine whether limited depositions would be helpful or necessary. Here, proceeding in the traditional manner, through deposition and then cross-examination will significantly streamline the presentation of evidence at the second portion of the confirmation hearing. Consistent with the Court’s extension of the deadline to submit expert discovery in opposition to confirmation (and to

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conduct depositions related thereto), the Debtors respectfully request the opportunity to depose individuals who indicate an intent to submit written testimony in opposition to confirmation between October 10 and the day before that witness is proposed to testify.

Procedures Governing Testimony. Paragraph 6 of the *Order Establishing Case Management Procedures for the Confirmation Hearing* provides that “[u]nless otherwise ordered by the Court, all declarants must appear in the courtroom for cross-examination,” and that any request for remote testimony must comply with the terms of Fed. R. Civ. P. 43(a). The Debtors understand that the in-court attendance requirement applies to *pro se* creditors, meaning that any *pro se* creditors or witness of a *pro se* creditor who seeks to appear remotely must make such a request under Fed. R. Civ. P. 43(a). The Debtors request that any Fed. R. Civ. P. 43(a) requests be submitted by 5:00 p.m. ET on Thursday, October 12, 2023. The Debtors further request that, in the event remote testimony is permitted, declarants and/or other witnesses be required to appear on camera for all portions of questioning. The Debtors submit that this will provide the parties, the Court, and the public an opportunity to assess the credibility of testifying witnesses.

Order of Opposition Declarants. Paragraph 4 of the *Order Establishing Case Management Procedures for the Confirmation Hearing* requires parties-in-interest to offer written direct testimony and exhibits they intend to offer in opposition of confirmation on or before 12:00 noon, October 11, 2023. After that deadline has passed, the Debtors respectfully asks the Court to issue a notice identifying the tentative order in which it anticipates taking testimony from declarants or other witnesses. In the Debtors’ view, this will offer parties a greater opportunity to prepare for cross-examination and to disclose any exhibit lists in advance of the applicable evidentiary testimony.

Exhibit & Demonstrative Disclosure. Consistent with the procedures governing the presentation of evidence in support of confirmation, the Debtors request that parties disclose exhibits and demonstratives they intend to use during cross examination no later than 5:00 p.m. ET the evening before a witness is expected to testify.

Rebuttal Evidence. The Debtors carry the ultimate burden of proving by a preponderance of the evidence that the plan should be confirmed. The original deadline for serving expert reports was September 22, 2023. *See* Dkt. No. 3356. On that date, the Committee served its expert report on all parties that had objected to confirmation. On October 4, 2023, the Court granted certain parties wishing to oppose confirmation additional time to enter expert testimony. *See* 10/4/23 Trial Tr. 269:12-18 (“And, you know, and I read to you from the procedures order that I had entered, and shortly after that, one of my law clerks pointed out to me the schedule for submitting expert testimony, which was earlier than that, but I said on the record what deadline I was setting. So we’ll follow that. So you’re not out of time.”). In light of that extension, the Debtors therefore respectfully request an opportunity for parties to submit rebuttal declarations and evidence in

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support of the plan immediately following the opposition phase of the confirmation hearing, filing on the docket any supplemental declarations and exhibits no later than 5:00 p.m. on October 18, 2023.

Sincerely,

/s/ T.J. McCarrick

T.J. McCarrick

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(Proposed) Supplemental and Remaining Deadlines

Event	Deadline
Parties-in-interest must submit sworn testimony in opposition to confirmation, including expert declarations	October 11, 2023 at 12:00 p.m.
Represented parties must submit paper copies of exhibits and declarations to the Court	October 11, 2023 at 5:00 p.m.
Debtors submit paper copies of <i>pro se</i> objectors' exhibits and declarations to the Court	October 12, 2023 at 5:00 p.m.
[Proposed] Rule 43(a) Motions Due for parties seeking to appear remotely	October 12, 2023 at 5:00 p.m.
[Proposed] Submission of witness-specific cross exhibits and demonstratives	5:00 p.m. the night before witness is expected to testify
[Proposed] Parties-in-interest must submit rebuttal declarations in support of plan	October 18, 2023 at 5:00 p.m.